

HOWARD G. WILLISON

IBLA 89-366

Decided May 22, 1990

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring two unpatented placer mining claims abandoned and void. A MC 23647 and A MC 23648.

Reversed.

1. Administrative Procedure: Administrative Record--Evidence: Generally--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

By regulation 43 CFR 3833.0-5(m), the Department considers affidavits of annual assessment work or notices of intention to hold to be timely filed if placed in an envelope postmarked by the U.S. Postal Service on or before Dec. 30 and received in the proper BLM office on or before the following Jan. 19. Where the record shows that a mining claimant utilized the U.S. Postal Service to deliver his affidavit of assessment work and that it was received by the proper BLM office on Jan. 6, 1986, but the record does not contain the envelope in which the affidavit was sent, the mining claimant will not be required to bear the consequences of BLM's failure to retain the envelope, and a decision declaring the claim abandoned and void will be reversed.

APPEARANCES: Howard G. Willison, Jacksonville, Oregon, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Howard G. Willison appeals from a March 7, 1989, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring unpatented mining claims A MC 23647 and A MC 23648 abandoned and void for failure to timely file evidence of assessment work performed or notice of intention to hold the claims during the filing period ending December 30, 1988.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and Departmental regulation 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention

to hold the mining claim with the proper BLM office prior to December 31 of each year following the year in which the claim is located. Such filing must be made within each calendar year, *i.e.*, on or after January 1 and on or before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFaivre, 95 IBLA 26 (1986). Further, the filing with BLM must be a copy of what was or will be recorded with the local recording office. 43 U.S.C. § 1744(a)(2) (1982); 43 CFR 3833.2-2, .2-3. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4.

The record shows that the proof of labor for 1988 for the two claims in question was recorded with La Paz County, Arizona, on December 13, 1988. However, filing or recording the required documents with the local recording office does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985). Thus, a claimant challenging a determination of abandonment has the burden of presenting evidence of timely filing with BLM.

[1] Pursuant to Departmental regulation 43 CFR 3833.0-5(m), a document received by January 19 following the calendar year for which the document is filed will be considered "timely filed," provided the envelope containing the document bears a clearly dated postmark affixed by the U.S. Postal Service on or before December 30 of the subject year. The grace period afforded by the regulations will not apply where the envelope shows a postmark date later than December 30 of the filing period at issue. See David H. Holt, 88 IBLA 36 (1985); Arne W. Murto, 88 IBLA 19 (1985); Glenn Kroshus, 87 IBLA 213 (1985). Although the record shows that a copy of the proof of labor for the subject claims was filed with BLM on January 6, 1989, BLM reports in its decision that it was received in an envelope postmarked January 3, 1989. Hence, BLM deemed the claims to be abandoned and void.

The copy of the proof of labor in the official casefile bears a BLM-affixed stamp showing the document was received January 6, 1989. There is, however, no envelope bearing a postmark dated January 3, 1989, in the record. In fact, there is no envelope at all in the record relating to the January 6, 1989, filing.  
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In Gary Hennis, 108 IBLA 121, 123-24 (1989), the Board held that where the record shows that the mining claimant utilized an envelope postmarked by the U.S. Postal Service in which to transmit the annual filing, but BLM

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1/ While the lack of an envelope poses an obstacle to the application of the grace period afforded by 43 CFR 3833.0-5(m), since it is a fundamental requirement that the document be delivered in an instrument bearing a U.S. Postal Service postmark (see Victor Shepherd, 102 IBLA 334 (1988)), we must assume, absent any evidence to the contrary, that appellant utilized the U.S. Postal Service to deliver his annual filing, because unless the envelope had been postmarked and delivered by the U.S. Postal Service, BLM would not have addressed the issue of the postmark date.

fails to retain the envelope in which the annual filing is sent, the mining claimant will not be required to bear the consequences of BLM's failure to retain the envelope, and a decision declaring the claim abandoned and void will be reversed. The Board's holding focused on the duty of the State Office to preserve the envelope where the postmark date is a crucial factor in determining the timeliness of filings, citing R. G. Price, 8 IBLA 290, 292-93 (1972). Since the envelope containing Willison's annual filing apparently was destroyed or discarded by BLM, it would be patently unfair to allow BLM to utilize that fact in support of its position that appellant's calendar year 1988 filing was untimely.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

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Bruce R. Harris  
Administrative Judge

I concur:

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Franklin D. Arness  
Administrative Judge